

August 22, 2017

VIA ECF

Hon. P. Kevin Castel
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *In re: SunEdison Inc., Securities Litigation*, 16-md-02742-PKC [rel. 16-cv-07917-PKC;
16-cv-09566-PKC; 16-cv-09171-PKC; 16-cv-09172-PKC]

Dear Judge Castel:

We write on behalf of the plaintiffs in *Kearny Investors S.à r.l., et al. v. Goldman Sachs & Co., et al.*, 16-cv-09566-PKC; *Canyon Capital Advisors LLC, et al. v. TerraForm Global, Inc., et al.*, 16-cv-09171-PKC; and *Canyon Capital Advisors LLC, et al. v. Alvarez, et al.*, 16-cv-09172-PKC (collectively, “KKR/Canyon”) in response to the August 4, 2017 Reply Memorandum of Law in Support of Defendants’ Joint Motion to Dismiss Plaintiffs’ Claims Under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 (the “Reply”) in *Horowitz, et al. v. SunEdison, Inc., et al.*, 16-cv-07917-PKC. MDL Dkt. No. 224. KKR/Canyon disagree with many of the arguments in Defendants’ Reply, and look forward to addressing those issues in the context of KKR/Canyon’s individuals suits. We write here to address one particularly significant misstatement in the Reply.

In the Reply, in support of their disputed position that SunEdison, Inc. (“SunEdison”) investors could calculate the date and amount of the margin call based solely on publicly available information, Defendants argued that “[t]he sole determinant of the timing and maximum amount of any margin call was the value of SunEdison’s [Terraform Power, Inc. (“TERP”)] Class B shares (determined by the price of TERP’s publicly traded Class A shares) that collateralized the loan”—information that was known to investors. *See* Reply at 6-7.

However, the margin loan agreement does *not* support Defendants’ argument that the timing and amount of a margin call were based on the value of SunEdison’s TERP shares alone. Section 2.9(b)(i) states that “[i]f the Loan to Value Percentage on any Scheduled Trading Day exceeds the Margin Trigger Level,” then a margin call will occur. Reply Ex. 45, Ex. 10.1 (the margin loan agreement) at 38. “Loan to Value Percentage” is defined to include “the value of the Eligible Non-Share Collateral” (*i.e.*, something other than TERP Class B shares). *Id.* at 19-20. This is consistent with a prior admission made by the same individual defendants in a motion to dismiss, submitted herewith as Exhibit 1, in *Cobalt Partners, LP, et al. v. SunEdison, Inc., et al.*, 16-cv-02263-WHA (N.D. Cal.) (which has since been consolidated into this MDL), where they conceded that multiplying the number of SunEdison’s shares of TERP stock (32.2 million) by the trading price of TERP stock would only provide “an approximation” of the margin call trigger “because the 32.2 million shares of TERP stock were *not* the only collateral for the loan; the loan

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was also secured by certain other rights in the securities of a related party, Terra LLC.” Ex. 1 at 8 n.3 (emphasis added). Accordingly, and contrary to Defendants’ representations, the triggering point for the margin call could not be determined by investors based solely on publicly available information.

Respectfully submitted,

/s/ Andrew J. Rossman

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